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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,611	03/15/2004	Kristoffer Hess	K8000143US3B	8421
34236	7590	02/06/2006	EXAMINER GREEN, BRIAN	
VALENTINE A. COTTRILL SUITE 1020 50 QUEEN STREET NORTH KITCHENER, ON N2H6M2 CANADA			ART UNIT 3611	PAPER NUMBER

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/799,611	Applicant(s) HESS ET AL.	
	Examiner Brian K. Green	Art Unit 3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-14 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election of Species II (figures 33-35) in the reply filed on Nov. 22, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 1-10 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on Nov. 22, 2005.

Claim Rejections - 35 USC § 112

Claims 12-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 12, lines 13-14, stating that the flicker element is positioned between the light source and the screen is misdescriptive since figure 35 clearly shows that the flicker element (1161) is not located "between" the light source and screen.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Moss et al.

(U.S. Patent No. 3,395,476).

Moss et al. shows in figures 1-4 a flame simulating assembly comprising a simulated fuel bed (3), a light source (4), a screen (9) positioned behind the simulated fuel bed for transmitting and diffusing light, the screen including a plurality of curved portions (13), each of the curved portions adapted to attenuate the image of flames upon transmission through the screen to give at least a portion of the flames a three-dimensional appearance, and a flicker element (5) for causing light from the light source to fluctuate to form the image of flames. The flicker element of Moss et al. is located between the light source and screen. The arrangement of the curved portions (13) are considered to be random since Moss et al. shows that they are different sizes and shapes. Therefore, as broadly defined, the curved portions (13) are considered to be "random". In regard to claim 13, the curved portions (13) of Moss et al. are considered to be spaced apart from each other a randomly selected distance.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 12-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Schroeter et al.

(U.S. Patent No. 6,944,982).

Schroeter et al. shows in figures 10-14 a flame simulating assembly comprising a simulated fuel bed (17), a light source (10), a screen (27 and 12 in fig. 10 or just 27 in fig. 14) positioned

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behind the simulated fuel bed for transmitting and diffusing light, the screen including a plurality of curved portions (recessed curved portions, see column 6, lines 25-35 and column 7, lines 33-39), each of the curved portions adapted to attenuate the image of flames upon transmission through the screen to give at least a portion of the flames a three-dimensional appearance, and a flicker element (11) for causing light from the light source to fluctuate to form the image of flames. The flicker element of Schroeter et al. is considered to be located "between" the light source and screen in a manner similar to the way in which the applicant's flicker element is. The arrangement of the curved portions are considered to be random since Schroeter et al. shows that they are different sizes and shapes. Therefore, as broadly defined, the curved portions are considered to be "random". In regard to claim 13, the curved portions of Schroeter et al. are considered to be spaced apart from each other a randomly selected distance. In regard to claim 14, Schroeter et al. shows a flame effect element (28).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moss et al. (U.S. Patent No. 3,395,476) in view of Martin et al. (U. S. Patent No. 6,393,207).

Moss et al. discloses the applicant's basic inventive concept except for placing a flame effect element between the flicker element and the screen. Martin et al. shows in figure 3 the idea of

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placing a flame effect element (86) between the flicker element (84) and the screen (114). In view of the teachings of Martin et al. it would have been obvious to one in the art to modify Moss et al. by placing a flame effect element between the flicker element and the screen since this would create a more realistic and aesthetically pleasing flame effect.

Response to Arguments

Applicant's arguments filed Nov. 22, 2005 have been fully considered.

The applicant argues that it would not have been obvious to place the curved portions in a random manner on the screen of Moss et al. After further review, the examiner has determined that the curved portions on Moss et al. are placed in a "random" manner on the screen as broadly defined by the applicant in claim 12. The examiner has also added a new rejection based upon the Schroeter et al. patent.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K. Green whose telephone number is (571) 272-6644. The examiner can normally be reached on M-F 7am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Bkg
Feb. 1, 2006


BRIAN K. GREEN
PRIMARY EXAMINER